

REMARKS

Claims 1-4 and 10-12, and 17-26 are all the claims currently pending in the application. Claims 1-4 and 10-12 stand rejected over prior art. Claims 17-26 have been added. Figure 2 stands objected to for informalities.

Notwithstanding any claim amendments of the present Amendment or those Amendments that may be made later during prosecution, Applicant's intent is to encompass equivalents of all claim elements.

Specifically, claims 1, 2, 4, and 10-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fay '975 and claim 3 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Forrer '347. The Examiner maintained and made final the restriction requirement while acknowledging Applicant's traversal.

These rejections and the restriction are respectfully traversed in view of the following discussion.

THE RESTRICTION REQUIREMENT

Applicant traverses the Examiner's final restriction decision. The Examiner used the example that Figure 5 shows a housing around collection vessel 50 that claim 1 is generic. However, the housing 104 shown in Figure 5 is an add-on feature to the vessel extender container 90 and collection container 50. The container unit formed by

extender container 90 and collection vessel 50 falls under the claim language of claim

1. An additional housing added to the formed unit would be a species of the claim, not an entirely different claim. Therefore, the traversal is maintained as to the genericness of claim 1.

THE DRAWINGS

The Examiner has objected to Figure 2 because it "must be properly cross hatched to reflect the plastic material claimed in claim 11." (OA, paragraph 3). However, the drawing in Figure 2 was filed with element 48 cross-hatched to show the section views of the vessel extender container walls. The subject matter of claim 11 claims a construction material of the device shown in Figure 2. There is no extra device of a different material, claim 11 is only describing possible materials of construction for vessel container 48. Thus, no additional cross-hatching is needed in Figure 2, and Applicant respectfully requests that the Examiner reconsider and withdraw this objection.

THE PRIOR ART REJECTION

Claims 1-2, 4, and 10-12 stand rejected as obvious over Fay. The Examiner alleged that Fay teaches a collection vessel 12 and extender at 24, both having a mouth and being made of plastic material claimed. However, this is respectfully

incorrect because Fay merely discloses a funnel 24, not an extender as claimed, attached to a collection vessel. Fay discloses a graduated cylinder in an enclosure that attaches to a funnel that is used to collect biological fluids such as sputum specimens for testing and diagnosis. (Fay, C. 1, L. 24-28) Fay specifically teaches that the funnel is discarded after specimen collection (Fay, C. 1., L. 61). When collection of the specimen has been completed, cover 34 is kept but the funnel is removed from the container 12 and discarded. (Fay, Col. 6, L. 10-15). Fay clearly does not teach or suggest that the funnel becomes part of the collection container to hold fluids for further processing:

“After collection of the sputum the funnel is no longer needed.”
(Fay Col. 4, L. 60)

Fay only teaches a funnel that is temporarily on top of a test tube in order to catch a liquid sample from a person. Fay does not teach or suggest a vessel extender that is a container of liquid and creates a single “sample collection vessel”, as recited in claim 1, that “provides a volumetric capacity to hold the mobile phase flow stream beyond the volumetric capacity of the collection vessel.” Fay’s funnel combined with a test tube fails to teach or suggest a “vessel and further the funnel of Fay does not teach or suggest “the vessel extender [that] is formed as a straight-walled cylindrical

container,” as recited in claim 19. The funnel in Fay is clearly neither straight-walled nor cylindrical, which also does not teach or suggest “a vessel extender container comprising a hollow cylindrical body,” as recited in claim 12. The vessel extender is claimed as a container and the funnel of Fay clearly does not teach or suggest this aspect.

Further, the extender container and collection vessel combine to form a sample collection unit container in claim 12 or “collection vessel assembly” in claim 1. The funnel and collection tube 12 in Fay are do not combine to form a unitary container or vessel, the only vessel in Fay is the test tube. The Examiner’s statement that an intended function of the claimed device adds no meaning to the structure of what is claimed is also respectfully incorrect. While the Examiner has noted that the significance of intended use is not taken into account in the rejection, the differences in function of the Fay device and the claimed invention are important to determine why the forms of each device are different. Clearly Fay’s device uses a funnel to collect a specimen into a collection container that may be a test tube, but the funnel is not part of the collection container. It is merely a way to get liquid into the collection container. The funnel is disposable and intended to be disposable. After collection, the funnel is thrown away. For further processing of the sample, the container 12 is capped while it remains in base 42. For further processing:

"Although the capped container 12 may then be accommodated by a test tube rack or similar device until it is needed for centrifuging or other testing, base 42 may also be used as a holder." (Fay, C. 6, L. 22-25)

No liquid specimen is held in the funnel. The funnel is not designed to function to hold liquid beyond the capacity of container 12. Although Forrer is cited as using a seal between funnel and container 12, even if this was sealed to hold liquid in the funnel, the funnel cannot be held on the test tube for further processing, centrifuging or other testing, as cited above.

Fay states clearly that "the capped container and base may be placed on a hospital cart for transport or in a refrigerator or other storage area. The test tube or graduated cylinder, has no extension container on the top of it that extends the specimen container to become a single container assembly or unit that can hold greater volume of liquid phase sample than the collection container itself, as claimed and that can be used for post-processing of the liquid as recited in claims 18, 21, and 25. Fay does not teach or disclose using an extension container or vessel assembly as part of a processing system. The funnel of Fay's device is meant for catching liquid and then discarding, not for holding a sample as a vessel or container. Thus, no unitary collection vessel is intended or suggested by Fay.

THE REJECTION TO FORRER

Forrer illustrates and describes a threaded connection. However, the manner of connection taught by Forrer does not teach or suggest a connection that must hold liquids, as claimed by the present invention. Forrer only teaches a "hermetically sealed" connection. (Forrer, C. 2, L. 47-48) One skilled in the art knows that a hermetically sealed connection is for an airtight seal, not a liquid-tight seal. (Forrer shakes the liquid in the device back and forth but the seal taught by Forrer is not disclosed or known by one skilled to hold liquids under head pressure.

Forrer's seal would not hold liquid under head pressure. Thus, there is no teaching or suggestion of the sealed connection in claim 3 that must " hold the mobile phase flow stream," in the collection vessel assembly from claim 1 and a sample unit that is "sealably attached to provides storage of the liquid phase into the extended vessel container," as recited in claim 12.

In view of the foregoing, Applicant submits that claims 1-4 and 10-12, and 17-26, all the claims presently pending in the Application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above Application to issue at the earliest possible time.

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The Commissioner is hereby authorized to charge any fees associated with this communication to Attorney's Deposit Account No. 50-1768.

Respectfully Submitted,



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